

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

CESAR VELAZQUEZ, :

Petitioner :

v. :

UNITED STATES OF AMERICA, :

Respondent :

Criminal No. 3:00-CR-290-01

(Judge Kane)

ORDER

On May 10, 2001, Petitioner was sentenced to 240 months imprisonment following his criminal conviction for drug trafficking. On December 21, 2005, Petitioner filed a pro se pleading that he styled as a “Dodd Motion” whereby he seeks leave to file a habeas petition pursuant to 28 U.S.C. § 2255 after expiration of the applicable one-year limitations period imposed by the Antiterrorism and Effective Death Penalty Act of 1996 (“AEDPA”). Petitioner claims that in United States v. Dodd, 125 S. Ct. 2478 (2005), the Supreme Court held that the AEDPA’s one-year limitations period is triggered on the date on which a Supreme Court decision was handed down, if the decision is made retroactive. Petitioner predicates his “Dodd” claim on United States v. Booker, 125 S. Ct. 738 (2005), which held that mandatory application of the United States Sentencing Guidelines is unconstitutional.

It is unnecessary to consider Dodd's precise holding, however, because it is now settled that Booker did not announce a retroactive rule. See Lloyd v. United States, 407 F.3d 608, 615-16 (3d Cir. 2005) ("Because Booker announced a rule that is "new" and "procedural," but not "watershed," Booker does not apply retroactively to initial motions under § 2255 where the judgment was final as of January 12, 2005, the date Booker issued"). Petitioner's judgment

became final in 2001. Accordingly, the one-year limitations period under the AEDPA remains a bar to Petitioner's § 2255 application and the petition must be dismissed.

WHEREFORE, IT IS HEREBY ORDERED THAT Petitioner's "Dodd Motion" (Doc. No. 80) is **DENIED** and Petitioner's § 2255 challenge to his criminal sentence is dismissed as untimely.

S/ Yvette Kane
Yvette Kane
United States District Judge

Dated: February 10, 2005